IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 68 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF WEALTH-TAX

Versus

KASTURBHAI MAYABHAI (HUF)

Appearance:

MR BB NAYAK FOR MR MANISH R BHATT for Applicant.

SERVED BY RPAD - (N) for Respondent.

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.A.MEHTA

Date of decision: 05/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1 The Commissioner of Wealth Tax is in reference against the order of the Tribunal for assessment years 1978-79 to 1980-81 and the following question of law has been referred under section 27 of the Wealth Tax Act,1975 (hereinafter referred to as 'the Act') :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in confirming the order of the A.A.C. in cancelling the assessment which was made on protective basis ?"

2 The assessee H.U.F., with one Shri Kasturbhai Mayabhai as its karta, filed its returns of wealth in respect of the assessment years under consideration and declared in the said returns share in value of movable and immovable properties to the extent of 7 Annas in a rupee. The Wealth Tax Officer was of the opinion that as the entire wealth belonged to Shri Kasturbhai Mayabhai, Individual, he assessed the declared wealth to the extent of 7 annas in rupee in the hands of assessee HUF on a protective basis.

3 In appeal the Assistant Commissioner of Wealth Tax cancelled the protective assessment holding that the assets did not belong to the assessee HUF. The assessee further filed appeal before the Tribunal but the Tribunal upheld the findings recorded by the Appellate Assistant Commissioner.

4 Mr.B.B.Nayak, learned Counsel appears on behalf of the applicant-revenue. Though served none appears on behalf of the respondent-assessee.

5 At the time of hearing our attention was invited to a reported decision in income tax proceedings in assessee's own case reported in 222 I.T.R.474. On the same day viz. 21/9/1995 Wealth Tax Reference being Wealth Tax Reference No.39 of 1982 was also decided by this Court wherein it has been specifically held that the assessee HUF had correctly returned 7 annas share in a rupee as wealth belonging to the HUF and the Tribunal and the Appellate Assistant Commissioner were not right in cancelling the protective assessment. In fact, the said wealth had to be assessed on a substantive basis in the hands of the assessee HUF. Following the aforesaid decision, we answer the question referred to us in the negative i.e. in favour of the assessee and against the revenue.

6 The reference stands disposed of accordingly.

There shall be no order as to costs.

Sd/- Sd/-
(B.C.Patel, J) (D.A.Mehta,J)

m.m.bhatt